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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>		Application Number	Filed
		09/881,734	June 18, 2001
		First Named Inventor	
		A. Scott HOLLUMS	
		Art Unit	Examiner
		2665	Phan, Man U.
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>			
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number 36,013</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p>		<p> _____ Signature</p> <p>Robert Sokohl _____ Typed or printed name</p> <p>(202) 371-2600 _____ Telephone number</p> <p>May 8, 2007 _____ Date</p>	
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<p><input checked="" type="checkbox"/> *Total of <u>one (1)</u> forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of:

HOLLUMS *et al.*

Appl. No.: 09/881,734

Filed: June 18, 2001

For: **System, Method, and Computer
Program Product for Scheduling
Burst Profile Changes Based on
Minislot Count**

Confirmation No.: 8770

Art Unit: 2665

Examiner: Phan, Man U.

Atty. Docket No.: 1875.0700004

Arguments to Accompany the Pre-Appeal Brief Request for Review

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Mail Stop: AF

Sir:

Applicant hereby submits the following Arguments, in five (5) or less total pages, as attachment to the Pre-Appeal Brief Request for Review Form (PTO/SB/33). A Notice of Appeal is concurrently filed.

Arguments

Applicant's arguments in the Amendment and Reply under 37 C.F.R. § 1.111, filed in response to the Office Action issued June 27, 2006, were not properly considered or responded to by the Examiner in the Final Office Action issued January 08, 2007 ("Office Action"). In particular, the Examiner's response was legally and factually deficient because the Examiner failed to adequately show where any of the cited references teach or suggest (1) storing a predetermined changeover time in the serial interface, and (2) sending the parameters to the physical layer device at the changeover time, as recited by each of the independent claims.

For a rejection to be legally adequate under 35 U.S.C. § 103, every claim limitation must similarly be taught, or be obvious to person of ordinary skill in the art, in

the combination of the references. *See Orthopedic Equipment, Inc. v. United States*, 702 F.2d 1005, 1013 (Fed. Cir. 1983).

The Examiner rejected claims 1-5 and 7-13 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,275,498 to Bisceglia et al. ("Bisceglia") in view of U.S. Patent No. 6,108,713 to Sambamurthy et al. ("Sambamurthy"). In rejecting these claims, the Examiner has asserted that Bisceglia and Sambamurthy in combination teach the features recited in independent claims 1 and 8 of storing a predetermined changeover time in the serial interface and sending parameters to a physical layer device at the stored changeover time. However, as will be explained below, Bisceglia and Sambamurthy, individually or in combination, fail to teach or suggest these features, and thus the Examiner's continued rejections based on 35 U.S.C. § 103(a) are legally and factually deficient.

1. *Bisceglia and Sambamurthy do not Teach or Suggest Storing a Predetermined Changeover Time*

On page 6 of the Office Action, the Examiner admits that Bisceglia fails to explicitly teach that the serial peripheral interface (SPI) or any other structure ***stores a predetermined changeover time***. Nevertheless, the Examiner states:

Note that a serial peripheral interface (SPI) is employed to control the interface between MAC layer components and PHY layer components for a mutual data transmission. Such an interface employs handshaking as a way of transmitting and receiving signals such as an information request, a transmission check, a reception check, and the like to perform the mutual data transmission, and its well know in the art.

Applicants respectfully submit that handshaking as a way of transmitting and receiving signals is not equivalent to ***storing a predetermined changeover time***. Thus Bisceglia clearly fails to teach or suggest a serial interface that "stores a predetermined

changeover time" as recited in independent claim 1 or the step of "(d) storing the changeover point in the serial interface" as recited in independent claim 8.

The Examiner alleges that Sambamurthy supplies the teaching missing from Bisceglia. Applicants disagree. Sambamurthy describes use of SUPERMAC management block 117 for interfacing between transmitting SUPERMAC Tx controller 118 and receiving SUPERMAC Rx controller 120. Sambamurthy recites:

Furthermore, SUPERMAC management 117 is advantageously suited to prevent transmission from SUPERMAX Tx controller 118 until FIFO Tx 106 is appropriately loaded, or a predetermined period of time is lapsed.

(see Sambamurthy at col. 10, lines 57-61). Applicants respectfully submit that waiting for a predetermined period of time prior to transmission does not imply *storing a predetermined changeover time*. Nowhere does Sambamurthy describe a Serial Peripheral Interface or any structure that stores a predetermined changeover time. Thus Sambamurthy also fails to teach or suggest a serial interface that "stores a predetermined changeover time" as recited in independent claim 1 or the step of "(d) storing the changeover point in the serial interface" as recited in independent claim 8.

2. *Bisceglia and Sambamurthy do not Teach or Suggest Sending Parameters to a Physical Layer Device at the Predetermined Changeover Time*

On page 6 of the Office Action, the Examiner concedes that Bisceglia does not expressly disclose the step of sending the parameters to the physical layer device at the stored predetermined changeover time and points to Sambamurthy to supply the teaching missing from Bisceglia.

Applicants respectfully assert that Sambamurthy also does not teach or suggest this feature. When discussing Sambamurthy, the Examiner fails to assert in the Office Action that Sambamurthy teaches or suggests sending "the parameters to the physical

layer device at the predetermined changeover time" as recited in independent claim 1. Rather, the Examiner asserts that Sambamurthy teaches "to change a physical layer parameter responsive to the collected statistics" (*see* page 7 of the Office Action). Applicants respectfully assert that changing physical layer parameters in response to collected statistics is not equivalent to sending parameters to a physical layer device at a predetermined changeover time. For example, col. 10, lines 42 to col. 11, lines 52; col. 12, lines 32-42; col. 12 lines 56 to col. 13, lines 37 and Figs. 2, 3 of Sambamurthy, cited by the Examiner on page 7 of the Office Action, do not teach sending parameters to a physical layer device at a predetermined changeover time.

In response to Applicants' arguments filed in the reply dated October 27, 2006, The Examiner has failed to address Applicants' arguments regarding the applied references. Instead, at pages 3-4 of the Office Action, the Examiner state that the DOCSIS standard, Applicants' Fig. 1 and paragraphs [0003]-[0013] of the specification teaches sending parameters to the physical layer device at the stored predetermined changeover time. Applicants respectfully disagree (notwithstanding the fact that the Examiner's remarks do not relate to the pending rejection). FIG. 1 and paragraphs [0003]-[0013] of Applicants' specification describe the start of a mini slot of dead time during which a central processing unit (CPU) at the headend is interrupted and software running on the CPU writes to a PHY device. However, the cited paragraphs and figure of Applicants' disclosure cited by the Examiner fails to teach storing a predetermined changeover time in a serial interface and sending stored parameters to a physical layer device at the stored predetermined changeover time.

4. Conclusion

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a) over Bisceglia in view of Sambamurthy.

The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency, or credit any overpayment, to our Deposit Account No. 19-0036.

Respectfully submitted,

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